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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/017,302	12/14/2001	Herbert Eichenauer	Mo-6481/LeA 33,272	7242

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EXAMINER

TRAN, THAO T

ART UNIT	PAPER NUMBER
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1711

DATE MAILED: 04/08/2003

4

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/017,302

Applicant(s)

EICHENAUER ET AL.

Examiner

Thao T. Tran

Art Unit

1711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 14 January 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) 11-13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-10, drawn to a polymer component and process for making, classified in class 528, subclass 486.
  - II. Claims 11-13, drawn to a thermoplastic blend, classified in class 525, subclass 191+.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II and I are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the two inventions are different. Invention I is on a polymer component and process of making; the polymer component comprising a polymer latex. Invention II is a thermoplastic molding composition that is a blend of the polymer component and a thermoplastic resin.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

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5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.
6. During a telephone conversation with Lyndanne Whalen on March 28, 2003 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-10. Affirmation of this election must be made by applicant in replying to this Office action. Claims 11-13 have been withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.
7. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Claim Rejections - 35 USC § 112***

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:  

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
9. Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the aqueous polymer latex" in lines 2-3. There is insufficient antecedent basis for this limitation in the claim.

*Claim Rejections - 35 USC § 102*

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 1-2, 4, 8, and 9-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Moore (US Pat. 4,948,852).

Moore teaches a polymer component and process of making; the process comprising coagulating a polymer latex by adding (a) a salt solution such as magnesium sulfate or aluminum sulfate; (b) an acid such as dilute sulfuric acid; and (c) a salt of a weak acid such as phosphite (see col. 4, ln. 60-63; col. 5, ln. 40-42; col. 6, ln. 26-29).

Moore further teaches the phosphite to be 1%-15% weight percent based on the polymer (see col. 5, ln. 45).

With respect to claims 4 and 9, since the presence of sulfuric, phosphoric, or acetic acid is only optional, the claims are rejected over the prior art.

12. Claims 1, 4, and 7-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Toritani et al. (US Pat. 5,169,903).

Toritani teaches a polymer component and process of making; the process comprising coagulating a polymer latex in the presence of triphenyl phosphite; sulfuric acid; and later adding magnesium sulfate. Toritani further teaches magnesium sulfate being 5%, phosphite being 0.2% (58 g phosphite and 30 kg polymer latex) by weight based on the latex resin (see col. 13, ln. 56 to col. 14, ln. 1; col. 15, ln. 45-47).

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Moreover, with respect to claims 4 and 9, since the presence of sulfuric, phosphoric, or acetic acid is only optional, the claims are rejected over the prior art.

13. Claims 1, 4, 7, and 9-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Troy et al. (US Pat. 5,534,594).

Troy teaches a polymer component and process of making; the process comprising agglomerating a polymer latex (seed latex) formed by emulsion polymerization, in the presence of aqueous sodium chloride; isoascorbic acid; and sulfuric, phosphoric, or acetic acid (see col. 2, ln. 38-58; col. 4, ln. 1-22).

Troy further teaches the use of 3 parts of acetic acid and 1.79 parts of sodium chloride whereas the polymer emulsion solid is 280.35 parts (35.6% x 787.5 parts) (see col. 6, ln. 1-15); which would translate into 0.01% of acetic acid and 0.6% of sodium chloride relative to the weight of the latex solids.

***Claim Rejections - 35 USC § 103***

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claims 3 and 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Toritani as applied to claim 1 above, and further in view of Wanat et al. (US Pat. 5,063,259).

Toritani is as set forth in claim 1 above and incorporated herein.

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Toritani differs from the instant claim because the reference teaches the use of triphenyl phosphite (see col. 13, ln. 67) instead of sodium hypophosphite.

Wanat teaches a process of making a polymer component comprising the use of sodium hypophosphite in addition to the coagulant such as sodium salts (see col. 6, ln. 10-15).

Wanat further teaches that the use of organic or inorganic reductants that are phosphorous-containing compounds, including phosphites or hypophosphites, would result in color reduction in the polymer component (see col. 6, ln. 1-10).

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to have expected that substitution of sodium hypophosphite, as taught by Wanat, for triphenyl phosphite in Toritani's invention would give the same results.

#### ***Contact Information***

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thao T. Tran whose telephone number is 703-306-5698. The examiner can normally be reached on Monday-Friday, from 8:30 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on 703-308-2462. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

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April 3, 2003



James J. Seidleck  
Supervisory Patent Examiner  
Technology Center 1700